



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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October 7, 2014

IN REPLY PLEASE
REFER TO FILE

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

31 of October 7, 2014

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**PARKLETS EAST LOS ANGELES PROJECT
DELEGATION OF AUTHORITY TO EXECUTE PARKLET AGREEMENTS AND SET
ASIDE FUNDS TO COVER ANNUAL INSURANCE COSTS FOR THREE YEARS
IN THE UNINCORPORATED COUNTY AREA OF EAST LOS ANGELES
(SUPERVISORIAL DISTRICT 1)
(3 VOTES)**

SUBJECT

This action is to reprogram prior year's First Supervisorial District excess park funds to use for covering insurance costs for proposed Parklet locations and to delegate authority to the Director of Public Works to execute Parklet Agreements between the County of Los Angeles and project sponsors.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the Parklets East Los Angeles project is categorically exempt from the California Environmental Quality Act for the reasons stated in this letter and in the record for this project.
2. Allocate up to \$367,188 in principal funds remaining from the completed Avocado Heights Park Project and currently held by the Community Development Commission to be set aside for the payment of insurance and any necessary repair costs for the project.

3. Delegate authority to the County of Los Angeles' Risk Manager, using the County of Los Angeles' Broker of Record, to secure a General Liability insurance policy for an estimated cost of less than \$50,000 per year as well as take any other measures to mitigate risks associated with this project.
4. Delegate authority to the Director of Public Works or her designee to execute agreements and subsequent amendments, if any, between the County of Los Angeles and project sponsors for the operation and maintenance of three Parklets in the unincorporated County area of East Los Angeles.

PURPOSE/JUSTIFICATION

The purpose of the recommended actions is to allocate excess principal funds from a completed First Supervisorial District Park to be used to fund insurance expenses; to authorize the Director of Public Works or her designee to enter into agreements, in a form substantially similar to the enclosed, for the operation and maintenance of three Parklets to be placed in road right of way in the unincorporated County area of East Los Angeles; to authorize the County of Los Angeles' Risk Manager to secure a General Liability insurance policy; and to find that these actions are categorically exempt from the California Environmental Quality Act (CEQA).

The Department of Public Works has evaluated the feasibility of a Parklet pilot program in the unincorporated County area of East Los Angeles and has identified three potential sponsors. Parklets are small planting/seating areas in road right of way that are placed at the curbside. They are publicly accessible and open to all. Each Parklet will be constructed by the County; however, the operation and maintenance will be performed by the adjacent business owner (Sponsor) in accordance with the respective Parklet Agreement (Agreement).

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Community Support and Responsiveness (Goal 2) by using existing resources to initiate community-supported projects that will provide aesthetic enhancements to the streetscape and beautify neighborhoods, thereby improving the quality of life for the residents of the County.

FISCAL IMPACT/FINANCING

The cost of the three Parklets and associated curb and gutter and sidewalk improvements is estimated to be \$317,000. The project cost includes the costs of

preparation of plans and specifications, utility coordination, job order contract, inspection, contract administration, change order contingency, and other County services.

Funding for this project is included in the First Supervisorial District's Road Construction Program in the Road Fund Fiscal Year 2014-15 Budget. The Road Fund will be reimbursed \$300,000 with First Supervisorial District funds in the Public Works General Fund Fiscal Year 2014-15 Budget.

The cost of the General Liability insurance is estimated to be less than \$50,000 per year. The First Supervisorial District will set aside \$150,000 to finance the cost of three years of liability insurance, \$100,000 for the liability insurance deductible, and an additional \$117,188 for any necessary repairs and other extraordinary maintenance cost associated with the Parklets for a total amount of \$367,188. This amount is included in the First Supervisorial District's Road Construction Program in the Road Fund and Measure R Local Return Fund Fiscal Year 2014-15 Budgets. The Road Fund and Measure R Local Return Fund will be reimbursed as needed up to \$367,188 from the Community Development Commission (Commission) using the reallocated Avocado Heights Park excess principal funds from First Supervisorial District. This money was transferred to the Commission by the Board on February 7, 2006; May 1, 2007; and December 14, 2010; for an aggregate total of \$9,400,000. The Avocado Heights Park Project was completed on November 29, 2012, with a remaining balance of \$367,188 in excess principal.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Parklets will be located within public road right of way in front of 203 South Mednik Avenue, 4514 Whittier Boulevard, and 3534 East 1st Street in the unincorporated County area of East Los Angeles.

The initial term of the Agreement is one year, with the County's right to extend the term for an additional 2-year term upon receipt of a written request from the Sponsor. The Parklets will be removed after three years if no new agreement can be negotiated with the Sponsors. The responsible party to provide insurance in any potential new agreement will be determined at that time. Each Parklet will be open to the public at all times. Each Sponsor is responsible for maintaining the Parklet in a safe, clean, sanitary, and orderly condition, including, but not limited to, graffiti removal. Each Sponsor is precluded from providing table service, placing condiments or napkins, or constructing any structures or advertisements on the Parklet.

The Board established a policy requiring that County departments address responsibility for liability costs between them and their contractors in service agreements. However, to encourage sponsorship for maintenance of the Parklets by others, the Agreements do not contain a requirement for the Sponsors to insure or indemnify the County in connection with their operation and maintenance of the Parklets. Therefore, in order to mitigate this risk, it is recommended that the County procure a separate \$5,000,000 annual General Liability insurance policy(ies) in lieu of self-insurance. The insurance will protect the County from significant injury or damage claims arising from the operation and use of the Parklet. Any legal defense and/or indemnity costs above this value would be paid by the County through self-insurance funds.

The Agreement has been reviewed by County Counsel and will be approved as to form prior to execution by the Director of Public Works or her designee.

ENVIRONMENTAL DOCUMENTATION

This project is categorically exempt from the provisions of CEQA, pursuant to Sections 15301(c) and 15303(e) of the CEQA Guidelines and Class 1(x), Subsections 14 and 22, and Class 3(b) of the Environmental Document Reporting Procedures and Guidelines, Appendix G. These exemptions provide for reconstruction of existing roadway pavements, curbs and gutters, sidewalks and drive aprons; maintenance of existing roadway facilities; and construction of new accessory structures. In addition, the project is not in a sensitive environment and there are no cumulative impacts, unusual circumstances, or other limiting factors that would make the exemptions inapplicable, based on the project records.

IMPACT ON CURRENT SERVICES

There will be no impact on current services or projects.

The Honorable Board of Supervisors
October 7, 2014
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CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Survey/Mapping & Property Management Division.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gail Farber". The signature is fluid and cursive, with the first name "Gail" written in a larger, more prominent script than the last name "Farber".

GAIL FARBER
Director of Public Works

GF:SGS:tw

Enclosure

c: Auditor-Controller (Accounting Division - Asset Management)
Chief Executive Office (Rita Robinson)
County Counsel
Executive Office

DR:tw

P:\MPPUB\ADMIN\TRACY\BOARD LETTER\DAYNA R\PARKLET\TRACK\BL.DOC\DR

Agreement No.: _____
Project Name: _____

PARKLET AGREEMENT

This Agreement is entered into by and between the

COUNTY OF LOS ANGELES,
a political subdivision of the State of California
herein referred to as "COUNTY"

and

_____.
herein referred to as "SPONSOR"

RECITALS

WHEREAS, the COUNTY operates and maintains portions of the public road right of way known as _____, State of California, and as more particularly shown on Exhibit A, attached hereto and made a part hereof, hereafter referred to as PREMISES; and

WHEREAS, the COUNTY proposes to install certain improvements within a portion of the public road right of way as depicted on Exhibit B, attached hereto and made a part hereof, hereafter referred to as PARKLET; and

WHEREAS, SPONSOR agrees to operate and maintain the PARKLET in accordance with the terms herein.

NOW, THEREFORE, in consideration of these recitals and the faithful performance by SPONSOR and COUNTY of the mutual covenants herein contained, for the period of time herein set forth, the COUNTY and SPONSOR hereto mutually agree as follows:

SECTION 1. Authorized Use

- 1.1. SPONSOR is authorized and permitted to use the PREMISES for the operation and maintenance of the PARKLET in accordance with the terms and conditions of this Agreement. Any other use of the PREMISES by SPONSOR is expressly prohibited.

- 1.2. SPONSOR expressly acknowledges and agrees to keep the PARKLET free and open to all members of the public, whether or not they patronize SPONSOR'S business. SPONSOR shall ensure a sign remains visible at all times to indicate the PARKLET is open to the public.
- 1.3. SPONSOR'S use of the PREMISES shall be subordinate to the primary uses of the PREMISES for public road right of way and SPONSOR'S use of the PREMISES shall at no time interfere with the use of PREMISES for such purposes.
- 1.4. Nothing in this Agreement shall constitute a grant by the COUNTY of any ownership, leasehold, easement, or other property interest, estate, or possessory interest whatsoever in the PREMISES or any portion thereof. Nothing in this Agreement shall be construed as granting or creating any franchise rights pursuant to any Federal, State, or local laws. SPONSOR accepts the PREMISES in their "as-is" condition, without representation or warranty of any kind by the COUNTY and subject to all applicable laws, rules, and ordinances governing the use of the PREMISES for SPONSOR'S intended purpose. Use by the SPONSOR of the PREMISES is temporary and does not constitute an abandonment, whether express or implied, by the COUNTY of any of its rights associated with the statutory and customary purposes and uses of the PREMISES as public road right of way.

SECTION 2. Prohibited Uses

- 2.1 SPONSOR will not provide table service at the PARKLET.
- 2.2 SPONSOR will not place condiments or napkins at the PARKLET.
- 2.3 SPONSOR shall not construct or place any structures in or on top of the PARKLET or PREMISES without prior written approval from the COUNTY.
- 2.4 SPONSOR shall not place any advertisement on PARKLET or PREMISES.

SECTION 3. Maintenance of Parklet and Premises

- 3.1 SPONSOR shall perform weekly inspections of the PREMISES and PARKLET using the inspection checklist provided in Exhibit C and provide copies to the COUNTY upon request.

- 3.2 SPONSOR shall keep and maintain the PREMISES and PARKLET in a safe, clean, sanitary, and orderly condition at all times during the term of this Agreement and shall not permit trash and debris, including, but not limited to, rubbish, tin cans, bottles, cigarette and other smoking paraphernalia waste, and garbage to accumulate at any time, nor shall SPONSOR commit, suffer, or permit any waste on the PREMISES or PARKLET or permit any acts to be done in violation of any laws or ordinances thereon.
- 3.2. SPONSOR shall keep clean and remove graffiti from the PREMISES and PARKLET and any walls, fences, signs, or furniture that are located within the PREMISES anytime graffiti is discovered by SPONSOR or anytime SPONSOR is notified by the COUNTY. Graffiti must be removed within the following guidelines:
- 3.2.1 Remove vulgar graffiti (i.e., profane, obscene, or racist) within 24 hours, Monday through Friday.
- 3.2.2 Remove other graffiti within 48 hours, Monday through Friday.
- 3.3 SPONSOR shall maintain all plants and landscaping in good health and condition. However, SPONSOR shall prevent overirrigation of plants and landscaping to minimize runoff and associated pollutants, such as fertilizer and pesticides.
- 3.4 SPONSOR shall keep the PREMISES free of pests and vectors.
- Any use of chemicals shall be in compliance with all Federal, State, and local laws and shall be accomplished by a State of California Qualified Applicator license. In compliance with the California Food and Agricultural Code, SPONSOR shall provide the COUNTY with a copy of the valid Qualified Applicator license and Pest Control Business license prior to using any and all applicable chemicals within the area(s) to be maintained.
- Chemicals shall only be applied by those persons possessing a valid California Certified Applicator's license. Application shall be in strict accordance with all governing regulations.
- 3.5 SPONSOR shall sweep or wipe the PREMISES on a daily basis and avoid hosing down the PREMISES.
- 3.6 SPONSOR shall maintain drainage along the gutter, where the gutter passes under the PARKLET.

- 3.7 SPONSOR shall power wash the area under PARKLET once a year. Water from pressure washing or any other hosing of the PREMISES shall not be allowed to flow into the municipal separate storm sewer system including the gutter and storm drain. SPONSOR will use appropriate stormwater best management practices (BMP).

(LA County Stormwater BMP Design and Maintenance Manual: <http://dpw.lacounty.gov/ldd/publications/Stormwater%20BMP%20Design%20and%20Maintenance%20Manual.pdf>)

- 3.8 SPONSOR shall provide, clean, and empty trash receptacles on a daily basis.
- 3.9 SPONSOR shall maintain accessibility to individuals with disabilities per the Americans with Disability Act Accessibility Guidelines. Individuals with wheelchairs must be able to enter the PARKLET and access all features of the PARKLET.
- 3.10 SPONSOR shall perform all maintenance, including replacement/repair of any property of the County or PREMISES that is damaged by SPONSOR, at SPONSOR'S cost and expense. SPONSOR shall tape off, or otherwise mark the area damaged by SPONSOR, to prevent public use of affected area until SPONSOR completes the repair.
- 3.11 SPONSOR shall inform the COUNTY by calling (800) 675-4357 within 24 hours of discovering the need to replace or repair any part of the PARKLET that becomes damaged; SPONSOR shall tape off, or otherwise mark the area, to prevent public use of affected area until COUNTY completes the repair.

SECTION 4. Term

- 4.1. The term of this Agreement shall be for one (1) year, subject to the COUNTY'S right to terminate SPONSOR'S use as provided for in Section 5, below.
- 4.2 This Agreement shall expire at the end of the Initial Term provide; however, the COUNTY may extend the term of this Agreement for an additional two (2) years, subject to such terms and conditions as it deems appropriate, upon receipt of a written request from SPONSOR no earlier than six (6) months or later than two (2) months prior to the end of the Initial Term.

SECTION 5. Termination of Use

- 5.1. The COUNTY shall have the right to cancel this Agreement and terminate use of the PREMISES or temporarily suspend such use as follows:
 - 5.1.1. In the event of an emergency, as determined by the COUNTY, at its sole discretion, the COUNTY has the right to immediately remove the PARKLET from the PREMISES and take exclusive possession of the PREMISES.
 - 5.1.2. In the event of a nonemergency, such as a utility conflict or road improvements or repairs, and the PARKLET has to be temporarily removed, the COUNTY shall remove the PARKLET from the PREMISES.
- 5.2. The COUNTY shall have the right to cancel this Agreement and terminate SPONSOR'S use of the PREMISES for any reason by giving SPONSOR at least thirty (30) days prior written notice.
- 5.3. SPONSOR shall have the right to cancel and terminate its use of the PREMISES and PARKLET, pursuant to this Agreement, for any reason by giving the COUNTY at least thirty (30) days prior written notice.

SECTION 6. Miscellaneous Terms and Conditions

- 6.1. SPONSOR releases the COUNTY and waives all rights to damages for any loss, costs, or expenses SPONSOR may sustain as a result of any damage to, or destruction of, the PARKLET or to the PREMISES.
- 6.2. SPONSOR and the COUNTY shall have no financial obligation to each other under this Agreement, except as herein expressly provided.
- 6.3. This Agreement is not intended to, and does not, create any private rights of action to third parties; no third parties are the intended beneficiaries of this Agreement.
- 6.4. The COUNTY, its Board, and any authorized officer, engineer, employee, or contractor, through its agents or representatives, shall have full right and authority to enter in and upon the PREMISES at any and all reasonable times during the term of this Agreement, all without interference or hindrance by SPONSOR, its agents, officers, contractors, employees, or representatives, for the purpose of inspecting the same and to serve or post any notice required or permitted by law for protection of any right or interest of the COUNTY.

- 6.5. Except as to fuels, lubricants, and products associated with motorized vehicles, equipment, gardening, or maintenance-related substances, or all of the above, SPONSOR shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about the PREMISES without prior written consent of the COUNTY, which shall not be unreasonably denied. In the event of spillage, leakage, or escape of any hazardous substance onto the PREMISES, SPONSOR shall immediately notify the COUNTY by calling (800) 675-4357. If the spillage, leakage, or escape was caused by SPONSOR, SPONSOR shall promptly remove any such substance from the PREMISES to the COUNTY'S satisfaction. In addition to removing any of SPONSOR'S hazardous substances, SPONSOR shall be liable for and reimburse the COUNTY for any and all cost and expenses that the COUNTY may incur or suffer as a result thereof. Such responsibility shall include cost or expenses as the COUNTY may incur by reason of Federal, State, local, or other authoritative agency's laws and regulations. Notwithstanding the foregoing, SPONSOR shall have no responsibility regarding any spillage, leakage, or escape associated with any of the COUNTY'S tenants, licensees, or easement holders.
- 6.6. The Agreement is not assignable. If SPONSOR wishes to transfer responsibility for the PREMISES and PARKLET, SPONSOR shall make a written request for such transfer to the COUNTY. Transfer of responsibility shall be in the COUNTY'S sole discretion and written approval. If such transfer is approved, a new agreement must be signed by new SPONSOR and all costs to prepare and process the new Agreement shall be borne by SPONSOR.
- 6.7 This Agreement is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
- 6.8 If any provision of this Agreement shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be affected, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this Agreement.
- 6.9 This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.
- 6.10 Any notice to be given or document to be delivered by the COUNTY or SPONSOR to the other party may be delivered in person to either party or by private courier or may be deposited in the U.S. mail, duly registered or certified, with postage prepaid and addressed to the party for whom intended as follows:

To COUNTY:

County of Los Angeles Department of Public Works
Attention Survey/Mapping Property Management Division
P.O. Box 1460
900 South Fremont Avenue, Alhambra, CA 91802-1460
(626) 458-7072; fax (626) 289-3618
for Emergencies, contact (626) 458-HELP (4357)

To SPONSOR:

DR:mr

P:\MPPUB\ADMIN\MARIA\2 ARPI\PARKLET AGRMNT.DOC

IN WITNESS WHEREOF, said COUNTY, a political subdivision of the State of California, as authorized by Los Angeles County Code Title 2, Division 2, Chapter 2.18, et seq., and attested to by the office of the Registrar-Recorder/County Clerk of the County of Los Angeles, and the SPONSOR, by its duly authorized representative(s), have caused this Agreement to be executed.

Date _____

By _____

COUNTY OF LOS ANGELES,
A political subdivision of the
State of California

Date _____

By _____

STEVEN G. STEINHOFF
Assistant Deputy Director
Department of Public Works

APPROVED AS TO FORM:

RICHARD D. WEISS
Acting County Counsel

By _____
Deputy